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Law among Nations

We still find it difficult to understand why the Government did not seek the authority of either the Security Council or the Assembly of the United Nations for their intervention in the war between Egypt and Israel. Events have moved so fast that this is already an old controversy and we must now look ahead and consider how best we can prevent the situation arising in which any government regards itself as justified in taking independent action. One fact emerges clearly, and it is this: law and morality without a police force are not enough. Internationally we still live in much the same atmosphere as our forefathers who were familiar with feuds and with the inability of the courts, such as they were, to enforce their awards or to punish crime. Our present situation is so absurd that the Russians with perfectly straight faces can offer to send forces to the Middle East against us. As lawyers we spend our time maintaining and strengthening the essential basis of civilisation in this country. Our influence and experience should be used immediately to help in establishing an international police force such as the United Nations are now belatedly organising. Such a force would be unable to prevent major conflicts, but it could deal with small clashes and would spare us the ignominy of having our actions in Egypt compared unfavourably with those of the Russians in Hungary. This week we are paying for past neglect. We should profit by the obvious lessons. In the meantime in Hungary Russian tanks and guns have crushed the uprising of a people against tyranny. We shudder to think of the fate which is overtaking ordinary men and women like ourselves.

The Queen's Speech

Her Majesty's Gracious Speech at the opening of the new Session of Parliament contained several proposals of importance to solicitors but few surprises. The promised Bill to amend the Rent Acts has since made its appearance, but too late for comment in this week's issue. We hope that the revision of the law governing the closing hours of shops and related matters will leave it simpler and not more complicated. We do not know how far the improvements in compensation for mining subsidence will go but clients of solicitors in mining areas can begin to hope. The only other measure of direct importance to solicitors appears to be one on hire purchase but we have no details. On larger issues there are to be fresh moves towards the reform of the House of Lords, while the Government seem bent on a legislative compromise on capital punishment in spite of the difficulties which their predecessors experienced.

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A Minor Triumph

RULE 11 of the Rules applicable to Pt. I of Sched. I to the Solicitors Remuneration Order, 1883, provides (*inter alia*) that scale charges shall not apply in the case of sales under the Lands Clauses Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser. This rule appears to have been inspired by a reprehensible desire to protect public authorities because that in practice has been its effect. At last reason has prevailed and, unless Parliament otherwise resolves before 26th November, from 1st December next the offending words in r. 11 will be struck out and the ordinary scale of charges will apply to all business of this character for which instructions are accepted on or after that date. The Order in question is the Solicitors Remuneration Order, 1956.

Stamp Duty on Exchange Transactions

A DOCUMENT was said by Mr. Justice DANCKWERTS, in *Portman* v. *Inland Revenue Commissioners* on 1st November, to be "explainable as being a bright idea by the conveyancer concerned with the matter." It had been put forward as a "mutual conveyance," and his lordship held that on its true construction it was "nothing more than the completion of two contracts of sale," each of which was liable to *ad valorem* stamp duty. LORD PORTMAN had on 14th February, 1955, agreed to purchase the equitable and beneficial interest in part of the Portman settled estates, which he had previously sold to the vendor company. The purchase price was £1,280,000, and on 18th February he agreed to sell to the company certain other properties for £1,460,000. A deed, dated 31st March, 1955, recited these agreements, the difference in the consideration, and the fact that the parties had agreed to complete the transactions by way of exchange. The Commissioners had held that the deed contained two conveyances on which the total duty was £54,000. For Lord Portman it was contended that the *ad valorem* duty amounted to only £3,600, on the £180,000 difference between the two considerations. Mr. Justice Danckwerts upheld the view of the Commissioners.

Practising Certificates

THE practising certificate season draws near and we remind our readers to fill in their forms and lodge them early. On 16th November this year the Solicitors Accounts (Amendment) Rules, 1956, and the Accountant's Certificate (Amendment) Rules, 1956, come into operation. All solicitors should consult with their accountants to make sure that their existing systems comply with the new rules or that, if they do not, the necessary alterations are made forthwith. Both sets of new rules can be found in our issue of 18th August at p. 617.

House Prices

THE "Occasional Bulletin" (No. 20) for October, 1956, issued by the Cooperative Permanent Building Society is devoted to the society's indices of house prices and house building costs. According to these the prices of houses sold with vacant possession rose during the first six months of 1956 by between 2½ and 4 per cent. and fell slightly in the third quarter of the year. The prices of houses sold in the range £1,501 to £2,500 (London £2,001 to £3,000) were stable during the third quarter of 1956, whilst the prices of cheaper and dearer houses fell by less than 1 per cent. The Bulletin states: "Over a period of some months, isolated statements have been made by estate agents and others that the credit squeeze is beginning to pinch and is manifested by a growing purchaser resistance to rising house prices and a considerable slowing down of sales. This is probably true of certain areas of the country but the conclusion drawn that there has been a general fall in house prices is certainly not supported by the society's indices." The Bulletin also states that house building costs rose during the first nine months of 1956 by about 3 per cent. This was due to increases in both labour and material costs. The average price of new properties mortgaged to the society rose from £2,121 in the last quarter of 1955 to £2,207 in the third quarter of 1956.

Planning in 1955

PLANNING appeals, according to the report of the Ministry of Housing and Local Government for 1955, remained fairly steady at about 500 a month during the early months of 1955, but the upward trend apparent since 1953 was resumed during the summer, and the year's total of 6,553 was the highest recorded. The opinion is expressed in the report that the main cause of the increase is the increase of private building following the disappearance of building licensing, coupled with a shortage of building land in some of the areas of greatest demand. Meanwhile, a further twenty-five development plans were approved, and, by the end of the year, eighty, well over half the plans for the whole country, had been approved. Most appeals, the report states, have little effect on the broad picture of development, but "it is by the cumulative result of planning decisions that the regulating effect of planning policy is brought about." One other point in the report of interest to solicitors, in London at any rate, is that in the City planning permissions since the war represented a net increase of one-third in office floor space compared with pre-war. The Minister queried whether more office projects had not been approved than would meet the demand.

Commonwealth Universities Interchange

WHILE applauding the magnificent work achieved during its eight years' existence by the Committee for Commonwealth University Interchange as shown by a report recently published by the British Council, we cannot help observing and deploring the relatively insignificant place which the interchange of law teachers occupies in the scheme. Out of 210 university teachers of the United Kingdom and the Commonwealth who received higher category grants from the British Council to pursue research and deliver lecture courses in different parts of the Commonwealth, only two law teachers represent studies of a subject which more than any other binds together the different parts of the Commonwealth. The lower grants for law study number three out of 120. The funds at the disposal of the committee are small—only £12,583 was available for 1955–56—and the Committee states that only a small portion of the requests for travel grants may be met. Whatever be the cause of the tiny contribution by the committee to commonwealth law studies, we respectfully urge that the fault be corrected.

TAX AND DAMAGES—I

THE GOURLEY DECISION IN EVERYDAY PRACTICE

In December, 1955, the House of Lords gave its decision in *British Transport Commission* v. *Gourley* [1956] A.C. 185, holding that the amount to be awarded as compensation for loss of earnings, recoverable as part of the damages in an action for personal injuries arising out of a railway accident, ought to be calculated on the basis that those earnings were subject to income tax, including sur-tax. The question thus authoritatively resolved is one which many years of English practice, supported latterly by a decision of the Court of Appeal, had answered in the opposite sense; so that the novelty of the effect of the decision on, for instance, the negotiation of settlements in undisputed cases will not yet have worn off. Moreover, some nice problems of estimation have been thrown up for the exercise of the courts. How some of the more abstruse consequential conundrums have been resolved we shall try to explain in further articles. For the moment it is proposed to indicate briefly the scope of the decision and the conditions for its application, and to examine its effect in those simpler cases in which solicitors are likely to have to take the ultimate responsibility for advice.

While the *Gourley* decision itself was given in a personal injuries case, it has already become clear that its application is not limited to such cases. The decision appears to apply wherever compensation for loss of income forms a recoverable head of damages, and where the question is the proper basis for the quantification or estimation of the damage sustained under that head.

The substituted sum must have been taxable

Now damages for personal injuries are not liable to income tax, whereas what a man in fact earns is taxable. The inference from this—and it is amply supported by the cases which we shall mention later—is noteworthy. It is that the decision of the House applies only where a sum which is not itself taxable is awarded, or admitted to be due, as compensation for the deprivation, temporary or permanent, of a source or part of a source of income which is taxable. If either the sum recovered is by nature attractive to income tax or profits tax (as it may be, for instance, where the payment is in respect of the temporary loss of use of a trading asset: see *Burmah Steamship Co., Ltd.* v. *Inland Revenue Commissioners* (1931), 16 Tax Cas. 67; or on the termination of one of a number of agency agreements: see *Kelsall Parsons & Co.* v. *Inland Revenue Commissioners* (1938), 21 Tax Cas. 608), or if the income of which the plaintiff has been deprived would not have been subject to tax, then a rough equality between the financial position of the plaintiff after the award and his hypothetical position if there had been no cause of action is achieved without taking into account any taxation considerations, and there is neither need for nor propriety in any invocation of the *Gourley* principle.

Onus

The next point to bear in mind is that it is for the claimant to formulate his claim on the proper principles, taking due account of the incidence of tax, and if the matter comes to litigation to undertake the burden of justifying the reduced figure which he claims. In other words, it is for the plaintiff in a damages claim, any part of which is in respect of loss of income, to show by relevant evidence that the deduction to be made for tax is so much and no more; he is not merely to name a gross figure and leave it to the defendant to establish grounds for a particular deduction from the gross amount.

The rate of tax

How is the deduction to be estimated? Income tax is not, of course, a flat percentage levy. There is a standard rate, but by reason of a person's entitlement to allowances and of the operation of the reduced rate relief, it may well be that the over-all rate at which he would have been taxed in respect of the earnings in question is considerably less than the standard rate. On the other hand, because of sur-tax it may be much higher. We shall deal in more detail with sur-tax cases later. For the moment it is to be noted that the rate of tax by which the gross amount of the earnings is to be reduced is what some of their lordships called the "effective" rate of tax applicable to the particular individual in respect of that part of his income which is in question.

Obviously in considering this part of the problem it is not possible merely to draw a line between large claims for damages and smaller ones. The criterion is not the sum of compensation in issue, but the taxation position of the client. A married man with several young children can earn up to £600 or £700 a year without liability for income tax. If he has been off work for, say, six months as a result of an accident, and claims to be reimbursed his loss of earnings over that period, his claim will not fall to be reduced at all. In most simple cases, even if the subject pays tax, there would seem to be no objection to the short cut of ascertaining what his net earnings in fact were for a corresponding period at which he was paid at the same gross rate and during which his tax relief position was the same. That will be the quantum of the claim.

Two categories of damage

Not only past losses have to be considered. Damages for a cause of action which is not a continuing one must be calculated and awarded once and for all (*Fitter* v. *Veal* (1701), 12 Mod. Rep. 542). In respect of the period up to the date of the trial it is incumbent on the plaintiff to formulate as precisely as possible his loss of earnings and what additional tax he would have had to pay had he in fact earned them. But damage may continue to accrue after the date of the trial though the cause of action is not a continuing one in the sense that a fresh action will lie in the future for the additional damage. Hence a plaintiff must take into account in his claim for general damage his prospective loss of future earnings or the diminution which he anticipates in his earning capacity, and must again take account of taxation.

Special damage

Practical experience of the working of accident cases since the *Gourley* decision confirms that no difficulty is likely to arise with the calculation of special damages for loss of fixed earnings. Whereas in the past it has been the custom of insurance companies or employers on request to furnish solicitors acting for injured persons with a list of gross pre-accident earnings, now it is the custom to supply the figures of pre-accident earnings after deduction of the appropriate tax. Slight complications may arise where there has been a change of circumstances since the accident, such as the birth of a child to the claimant or a rise in the rate of pay applicable to the job he would have been engaged in,

Another possible complication to be watched for in small cases concerns the allocation of personal allowances against particular income. For instance, during year *A* a man may have paid property tax in respect of the house he owns and occupies at the standard rate, receiving his allowances in the coding applied to his remuneration. In year *B*, the accident having occurred meanwhile, his remuneration ceases, and he is allowed by the inspector to set off his personal reliefs against the Sched. A assessment. Any claim for the loss of the remuneration which he would have earned in year *B* must take account of tax at an effective rate different (i.e., higher) than that applied to his remuneration in year *A*. Other similar idiosyncrasies may present themselves, but since in dealing with special damage the events will have passed it should be possible, where the claimant is not a sur-tax payer and normally lives on a fixed salary, to form a close estimate without the arithmetic becoming too involved.

General damage

It is in connection with general damages that most of the problems will arise. But again, in so far as the continuing loss to be compensated may be measured by past earnings, it is no more difficult to bring those earnings into account at a net figure than to reckon them in full. The majority of claims for damages for personal injuries are by persons of modest means and no great impact is made by liability to tax, at all events unless the potential loss of earnings is large. The need to take tax into account has made little difference in the smaller cases so far.

However, there is no case so small that some unknown quantities are not capable of affecting the calculation, and the solicitor ought to be prepared, if he knows of some predictable contingency, to give it such effect as is consistent with the probability of the hypothesis.

For instance, it is nearly always open to conjecture what alterations there may hereafter be in the circumstances affecting a person's entitlement to reliefs. He may marry, or remarry, or there may be increases in his family and in the number of dependants for whom he has to provide, or deaths. Though the plaintiff may testify as to his intentions in regard to some of these matters, and so influence in his favour the effective rate applied in reduction of his gross general damages, the court must remain in the dark as to the facts. Indeed, it is a matter in which a declaration of intention may be thought to be of singularly little positive value. Apart from the possibility that such a declaration may be insincere (with practically no danger of retribution by action or prosecution), how can any man be positive about the future?

Perhaps the only certain prophecy of family circumstances relevant to the issue which could be made would be that, as from the beginning of a particular tax year, a child now eligible as a subject for the grant of child allowance will have exceeded the statutory age of sixteen. Still, the child may receive an unexpected legacy before that date putting his income over the permitted limit, or on the other hand may continue to receive full-time instruction of the kind that enables the child relief to be continued even beyond minority, where the facts justify it.

A broad view

On the whole problem practitioners cannot but find valuable guidance in a passage from the speech of Lord Goddard in the *Gourley* case. It is couched in the homely language of a summing-up applicable to an accident case not bedevilled by the complication of sur-tax or of changes of circumstances such as those we have indicated. It reads ([1956] A.C., at p. 209): "You know what the plaintiff was earning before the accident and what he had left to support himself and his family after tax was paid. You know his age. It is for you to consider for how long he would be likely to earn at the present rate. If he is a member of a partnership, take into consideration his position in the firm at the time of the accident. If a junior partner you may well think that his earnings would have increased as time went on, while if a senior partner they might well decrease as he ceases to give the same amount of time to the business of the firm. Remember that whatever he earned would be subject to tax, and that you will already have in mind when assessing his pre-accident income. No one can foresee whether tax will go up or down, and I advise you not to speculate on the subject but to deal with it as matters are at present. You cannot tell what his health would have been had he not been injured nor what fortune, good or bad, he might have met with. You know he had, when he was injured, a spendable income of so much" (adding if the plaintiff was in partnership: "You have heard the provisions of his partnership deed providing for an alteration in the shares and you may consider whether his injury may affect the earnings of the partnership"). "Taking all these matters into consideration, you will consider what is fair that a man of this age should receive in respect of the amount of disability which you find this accident has imposed upon him, remembering also that what you give is given once and for all."

This being a kind of basic formula, so far as it is possible to analyse the matter in simple words, we shall reserve for future articles a discussion of the reasons expressed by their lordships for the decision in *Gourley*, the extent of the application of that decision in cases involving the assessment of damages for loss of earnings, and the explanation of some examples which have already achieved inclusion in the reports.

J. F. J.
J. L. M.

INQUIRY INTO LAW OF TRADE EFFLUENTS

The Central Advisory Water Committee held its second meeting in London on 30th October at the Ministry of Housing and Local Government. The chair was taken by the parliamentary secretary to the Ministry, Mr. J. Enoch Powell. The committee received progress reports from the two sub-committees set up a year ago to inquire into the growing demand for water and the collection of information about the country's water resources. It also decided to establish a third sub-committee, on the disposal of trade effluents, with the following terms of reference: (i) "To examine existing legislation and the operation of the common law respecting the disposal from trade premises of liquid effluents (including solids in suspension), not being radio-active effluents; to examine the problems, including financial problems, arising therefrom; to consider whether farm or any other premises should be designated as trade premises for the purposes of disposal of such effluents; and to make recommendations; (ii) To examine the position respecting s. 8 (2) of the Rivers (Prevention of Pollution) Act, 1951 (which requires the consent of the Minister before a river board may take proceedings under s. 2 or s. 3 of that Act) and to advise whether it is desirable to suggest the extension of the operation of that provision beyond the term of seven years from the passing of the Act, and if so, for what further period." The membership of the sub-committee will be announced later.

PERSONAL REPRESENTATIVES AND TRUSTEES

THERE can be few better ways of ascertaining the problems which cause most difficulty in practice than by examining the points in practice submitted to us. Each one arises out of a transaction which some solicitor has in his office and almost all are forwarded for another opinion because decisions and assertions of writers of recognised text-books either are non-existent or fail to provide clear guidance. Although the subjects of such points vary a great deal, a high proportion, as might be expected, are on conveyancing matters, and it has been noted that an unexpectedly large number affect assents by personal representatives. Consequently it is thought that a few comments on the difficulties of common occurrence might be helpful to many solicitors.

Personal representatives and trustees distinguished

The first conclusion we would draw is that care is necessary to bear in mind the firm distinction between a personal representative and a trustee. Most wills appoint the same persons as executors and trustees. The latest edition (14th) of Emmet on Title, vol. II, p. 348, comments as follows: "There is a tendency to confuse the capacities of executor and trustee, caused, no doubt, because the same persons are usually both executors and trustees. It is always necessary to have an executor (or administrator) to administer an estate, but there is no need to appoint trustees unless some form of trust is constituted. The distinction between the two capacities is important because there must be at least two individual trustees for sale to give a good receipt for capital (Law of Property Act, 1925, s. 27 (1)), but this does not affect the right of a sole executor to give a good receipt (*ibid.*). Further, the rules as to assents are sometimes difficult to apply unless the distinction is kept in mind." This point was also discussed in an article in a recent issue of our contemporary the *Law Times*, vol. 221, p. 309, which suggested that wills might be drawn in a more logical form, as follows: first, revocation of previous dispositions; secondly, appointment of executors; thirdly, directions to executors to pay funeral and testamentary expenses and estate duty; fourthly, directions to executors to give effect to specific gifts and to pay legacies; fifthly, appointment of trustees; and, finally, a gift of the residue to the trustees on trust for sale upon the beneficial trusts declared. Although such a form is unconventional it makes the distinction between the duties of executors and trustees, draws attention to the interesting possibilities of appointing different persons to those offices, and, if the same persons are appointed, reminds them of the order in which their duties must be performed and of the stage when they cease to be personal representatives and become trustees.

Probably the most frequent reason for deciding whether land is held in the capacity of personal representative or of trustee is that a sole, or last surviving, holder (to use a neutral term) has died intestate. If that person was a trustee then, whether he appointed executors or died intestate, a legal estate vested in him passed to his personal representative or representatives. Provided there are at least two individual representatives, they can sell land under a trust for sale and give a good receipt for purchase money (Trustee Act, 1925, s. 18 (2), (3)). Alternatively, new trustees can be appointed pursuant to the Trustee Act, 1925, s. 36. On the other hand, if the capacity of the deceased was still that of personal representative, difficulty may in some cases be experienced. Let us, first, except the one simple case. If the deceased was an executor and he has appointed an executor by his own will that executor becomes personal representative of the original deceased and can sell as such (Administration of Estates Act, 1925, s. 7 (1)). The chain of representation is broken, however, by an intestacy, by failure to appoint an executor, or failure to obtain probate. If there is such a break it is necessary to take out a grant of administration *de bonis non*. That step involves some expense and is troublesome and so, understandably, it is unpopular. It follows that one has to decide whether the assets of the original testator (who is assumed to have appointed the same persons as executors and trustees for sale) were still held by an executor as such or by him but as trustee for sale.

Can an assent be implied?

Before 1926 an assent by personal representatives might be implied even where land was affected. The general rule was that where an estate was wound up and the assets were in the hands of the executor free from the administration of the estate the office was changed to that of trustee (*Eaton* v. *Daines* [1894] W.N. 32). The authority most frequently quoted is *Wise* v. *Whitburn* [1924] 1 Ch. 460. In that case a leasehold house was bequeathed to executors and trustees on trust to permit the widow to reside in it for life. The executors allowed the widow to live in the house until she died, a period of ten years. It was decided that they were no longer able to make title as executors because they had assented to the legacy soon after the testator's death and so had become trustees.

The Administration of Estates Act, 1925, s. 36 (4), requires that an assent to the vesting of a legal estate shall be in writing and that an assent not in writing "shall not be effectual to pass a legal estate." The purpose of this rule is to avoid the doubt as to whether, and at what period of time, an assent is to be implied. Unfortunately it does not appear to solve the difficulty we have outlined. This is because the generally accepted view is that an assent can be implied, in accordance with the rules operative before 1926, where the personal representatives are entitled to the property in another capacity, for instance beneficially or as trustees for sale. It is argued, and in practice normally accepted, that where the representatives and the assentees are the same persons a written assent is not essential. The basis of this argument is that there is no "passing" of the legal estate in these circumstances and so s. 36 (4) does not apply. It is not suggested for a moment that one should advise personal representatives to rely on this view and dispense with a written assent. Even if they regard a written assent to themselves as a waste of paper, they should be recommended to execute it to remove all doubt; there are many recognised precedents, for instance in the Law of Property Act, 1925, Sched. V. Nevertheless, the argument that an assent can be implied even after 1925 is usually accepted, particularly where appreciable time has elapsed since the death of the testator. Thus it is very often possible to avoid taking out a grant *de bonis non* on death intestate of a sole, or last surviving, personal representative by proving that by virtue of an implied assent that person held at the date of his death as trustee for sale. A purchaser should, of course, call for evidence, for instance by statutory declaration, that the administration of the estate has been completed and that the facts give rise to the implication according to the rules which were formulated before 1926.

Appointment of new trustees by executor-trustees

The application of these rules provides the answer to a question frequently put to us as to whether a grant *de bonis non* is necessary on the death intestate of a person who was both executor and trustee of an estate. A rather similar problem arises when the same persons are executors and trustees and they appoint new trustees although they have not executed any assent. In these circumstances we suggest that the answer is more clear. The appointment cannot be valid unless they have become trustees and so one can usually rely on the argument advanced above and add to it the further consideration that a court would give effect to the obvious intention by reading an assent into the appointment.

Another rather similar problem often arises on death of a sole, or last surviving, trustee for sale of land. His representatives can sell (assuming there are at least two individual representatives) or they can appoint new trustees. It often happens, however, that following the death of that trustee one person has become solely entitled to the proceeds of sale. Can the personal representatives vest the land in him by a simple written assent and so keep all equities off the title? In other words, can an assent be executed by personal representatives of a trustee in such a way as to protect a purchaser from the need to make inquiries as to the equitable title? There is no judicial authority, but we understand that titles made in this way are usually accepted in reliance on the view that an assent may relate to an interest "to which the testator . . . was entitled" and that a trustee is "entitled," although not beneficially.

No implied assent to tenant for life

The "implied assent" problem has been raised recently in a novel form. Land was devised to a widow for life with remainders and, for a time, the widow was also sole personal representative. The question asked was whether the widow might be assumed to have assented in her own favour as tenant for life although she had not executed any written assent. It seems that if the will creates a settlement, an assent cannot, since 1925, be implied in favour of the tenant for life, even if he was also sole personal representative. The reason is that a vesting assent is necessary, containing the particulars specified in the Settled Land Act, 1925, s. 5 (1). Section 6 (*b*) of that Act provides that where a settlement is created by will the personal representatives hold the land on trust to convey it to the tenant for life, and s. 8 (1) states that such a conveyance may be made "by an assent in writing." Having regard to the express reference to an assent in writing and to the purpose of keeping equities off the title, it seems clear that an assent cannot be implied.

We have given reasons why it is usually desired to assert that there has been an assent. Nevertheless, it is useful to remember that circumstances do arise in which the interests of the parties are best served by avoiding an assent and so leaving land vested in personal representatives. An example is where several executors hold land devised to an elderly tenant for life. As pointed out in Emmet on Title, 14th ed., vol. II, pp. 44, 45, if an assent is made in favour of the life tenant it will be necessary to consider the devolution on her death and a special grant may be required. Therefore, especially if the executors are members of the family, it may be better that the land should remain vested in them.

These comments do not purport to deal with all the difficulties of implied assents, nor do they advance all relevant arguments. It is hoped, however, that they give an outline of the approach which should be made to a few problems which are known to arise frequently.

S.

A GUARDIANSHIP DECISION

Re C. T. (an infant); Re J. T. (an infant) [1956] 3 All E.R. 500, which was decided in the Chancery Division before Roxburgh, J., will silence at least for the time being a controversy which has been going on in the magistrates' courts as to whether the Guardianship of Infants Acts allowed them to entertain applications in respect of illegitimate children as well as legitimate. The Guardianship of Infants Act, 1925, was a short one of eleven sections and of these, two—ss. 5 and 9—unquestionably apply to illegitimate children. The argument therefore was that if the Act applied to illegitimate children in two of its sections it must be presumed to apply also in the remaining seven unless there were strong reasons for not doing so. The strength of this contention is not impaired by the fact that s. 9 has since been repealed to be re-enacted by the Marriage Act, 1949. If, however, we accept the proposition that the Acts do include the illegitimate, from it flows the disconcerting consequence that they can be used to avoid the restrictions of time and corroboration imposed by the Bastardy Acts; and in fact in recent years a number of orders have been made in respect of illegitimate children, though most benches were cautious enough to do so only where paternity was not in dispute.

Roxburgh, J., held that apart from s. 5 of the Act of 1925, the Guardianship Acts applied only to legitimate children. He quoted with approval Lord Simonds *dictum* in *Galloway* v. *Galloway* [1956] A.C. 299, that "'child' *prima facie* means lawful child and 'parent' lawful parent. The common law of England did not contemplate illegitimacy, and shutting its eyes to the facts of life, described an illegitimate child as '*filius nullius*'"; but, of course, it must be remembered that Lord Simonds' was a dissenting judgment in this case, where it was held that the term "children" in the Matrimonial Causes Act, 1950, does include illegitimate children, which is precisely what many magisterial benches were deciding in the light of the similar terms of the Guardianship Acts.

An interesting light is thrown on the problem by the observations made by Lord Haldane when the 1925 Act was in the committee stage of the House of Lords. Lord Raglan moved that the reference to illegitimate children should be omitted from the Act. Lord Haldane vigorously opposed the amendment. "We are dealing with the interests of children primarily. Somebody has to look after them. We are saying that the mother of an illegitimate child may, in the circumstances, be the best person to look after the child. She may not; in that case the Bill makes provision for somebody to take her place" (Hansard, vol. 61, H.L. Deb. 663).

F. T. G.

Mr. Reginald Armstrong, solicitor, of Leeds, left £43,782 (£41,099 net).

Mr. Thomas Arthur Denby, solicitor, of Hull and Barton, left £33,833.

Landlord and Tenant Notebook

CONDITIONAL SURRENDER

In *Barclay's Bank, Ltd.* v. *Stasek* [1956] 3 W.L.R. 760; *ante*, p. 800, Danckwerts, J., applied a well-established principle—that if a surrender is intended for a particular purpose and that purpose fails the surrender is avoided—to some unusual facts. They were as follows.

In August, 1947, the owner of a house let three rooms in that house to the first defendant in the case at £1 a week. The second defendant was the tenant's wife. I will, for convenience's sake, call those rooms $a + b + c$. In April, 1948, the owner mortgaged the house to the plaintiffs in the action. The mortgage restricted the mortgagor as regards future letting, the statutory powers (Law of Property Act, 1925, ss. 99 and 100) being exerciseable only with their consent.

In September, 1951, the defendant gave up two of the three rooms and took a weekly tenancy of the other plus a fourth room at 15s. a week. I will call the subject of this demise $a + d$. In 1952 this tenancy was replaced by a letting of three rooms at £1 a week, a room being added to the second set: I call the result $a + d + e$.

No consent was sought to the second and third lettings, and when in 1955 the mortgagees recovered possession from the borrower under the terms of the mortgage they sought to rely on the omission as entitling them to possession of $a + d + e$. The defendants were content to plead that they held at any rate some part of the premises effectively against the landlord; they took what the learned judge called a nice point, contending that the principle referred to in my opening paragraph applied to the facts and saved them.

Older decisions

Accepting the contention, and concluding that as a result the defendants were entitled, not to retain possession of $a + d + e$, but to resume possession of $a + b + c$, Danckwerts, J., made rather brief reference to three nineteenth century authorities. I propose to go rather further back, but may usefully mention that in one of the cases cited in the judgment reference was made to a statement in Coke-upon-Littleton. Dealing with "Estates upon Condition" (s. 350), Coke says (p. 218B): "A condition annexed to a surrender may revest the particular estate, because the surrender is conditional."

The first authority I propose to mention is *Lloyde* v. *Gregory* (1638), W. Jo. 405. A lease had been assigned to two lads, aged 10 and 11; they surrendered it to the lessors (the Dean and Chapter of Peterborough), taking a new lease at the same rent and with the same covenants; they paid the rent, it was accepted, but when they came of age and sought to enter they found that the property (a rectory) had been let by a new dean to someone else. It was held that the surrender was absolutely void, the tenants having been infants; and that the result was "le primer lease continue still" (one feels that Sir William might have brushed up his Norman French).

This reasoning was applied in *Wilson* v. *Sewell* (1766), 4 Burr. 1975. The dispute had a long history, but the points that matter were that statutory building leases granted by a Master of the Rolls were sought to be impugned; there had been a twenty-one year lease in 1740, another twenty-one year one of the same premises in 1755, and a third for a similar term in 1762. The validity of the 1755 and 1762 grants was unsuccessfully disputed, but the report is useful in that it says: "it seemed that *if* the lease of 1762 had *not* been a good lease" [the italics are Sir J. Burrows'] "the acceptance would not have implied a surrender of the former one of 1755."

At about the same time *Davison d. Bromley* v. *Stanley* (1768), 4 Burr. 2210, decided the consequences of a grant by a lessor who, while he may not have forgotten the marriage in connection with which he had made himself tenant for life of a freehold, probably forgot, as Mansfield, C.J., said, that he had reduced his interest. A ninety-nine year lease had been granted by the then freeholder in 1686: in 1693, when the marriage settlement had been made, the lessor purported to grant a new ninety-nine year lease of the same premises to the lessee—and for some sixty years rent was paid and accepted under that invalid lease. Applying the principle, Mansfield, C.J., said accepting a void lease by which the lessee was not to enjoy, could not show an intention to surrender the other. "A void contract for a thing a man cannot enjoy cannot in common sense or reason imply an agreement to give up a former contract."

More recent decisions

Coming to the authorities referred to by Danckwerts, J., and taking them in chronological order, *Doe d. Biddulph* v. *Poole* (1848), 11 Q.B. 713, was a case in which the invalid lease—held, incidentally, to be voidable, not void—actually recited the surrender of the former one. Erle, J., said that the facts negatived intention to surrender unless the new grant were valid; cited the passage from Coke which I set out earlier; and held that there was no reason why it should not apply to an express surrender.

In *Doe d. Egremont* (*Earl*) v. *Courtenay* (1848), 11 Q.B. 702, the dispute arose out of the express surrender, in 1812, of a ninety-nine-year term granted in 1785, as expressed in the grant of a new similar term stated to be in consideration of that surrender "which surrender is hereby made and accepted." It was not till sixty years had run that the invalidity was noticed, restrictions on the power to lease having been ignored in 1812. Coleridge, J., examined the authorities with care, and concluded that "Where the new lease does not pass an interest according to the contract, the acceptance of it will not operate a surrender of the former lease; that, in the case of a surrender implied by law from the acceptance of a new lease, a condition ought also to be understood as implied by law, making void the surrender in case the new lease should be made void; and that, in the case of an express surrender, so expressed as to show the intention of the parties to make the surrender only in consideration of the grant, the sound construction of such instrument, in order to effectuate the intention of the parties, would make the surrender also conditional to be void in case the grant should be void."

The most recent authority cited was *Cadle* v. *Moody* (1861), 30 L.J. Ex. 385 (which, in Danckwerts, J.'s, view, gave us a particularly clear demonstration). The owner of two farms let one of them on a yearly tenancy to *T.P.* and *C.P.*; next day he mortgaged the property to *C.F.* Ten years later he let the other farm to the same tenants,

also from year to year. Three years later the tenants let the defendant into possession of both farms, telling the landlord that they were going to put the defendant into their shoes. The landlord never recognised the defendant as his tenant; when he accepted rent from him, it was paid in the presence of the two grantees. The plaintiff acquired the mortgage another three years later, and sued the defendant for possession without having given any notice to quit. What decided the issue was the *incompetency* of the mortgagor to create any new tenancy. "It is manifest," said Bramwell, B., "what the parties engaged in the transaction meant was, that the old tenancy should cease only on the supposition that a new one was created in the defendant."

Nature of the principle

It is clear that the principle is based on the desirability of giving effect to common intention, such common intention being inferred from conduct when not expressed. Also, that the intention was frustrated by uncontemplated factors is immaterial. Danckwerts, J., as mentioned, was content to cite three authorities among many; a more recent illustation could be found in *Canterbury Corporation* v. *Cooper* (1908), 99 L.T. 612 (D.C.); 100 L.T. 597 (C.A.), in which a 300-year lease granted in 1699 and surrendered on the acceptance of a lease for life in 1892 was found to have continued and to have expired in 1899 after all, the new grant being avoided by the Municipal Corporations Act, 1882, s. 108, as the consent of the local government board had been obtained. I hope to refer to that decision in a future article dealing with the possible difference between new leases which are void and new leases which are voidable.

Application to the facts

The cases cited all concerned new leases the subjects of which were identical with those of the former leases. In such cases, where surrender by operation of law is relied upon, this doctrine being based, like that which governs the "re-vesting," upon intention, it is easy for the principle to operate. It would be less easy to say what would happen if a tenant (many terms now, by reason of statutory security of tenure, possessing a "nuisance value") agreed to surrender for some consideration which subsequently failed; to take a somewhat crude example, if he found, after giving up possession, that the banknotes with which he had been paid were forgeries. But in *Barclays Bank, Ltd.* v. *Stasek* the surrender of the existing tenancy was held to have been effected by a grant which (i) included part of the premises demised and (ii) demised other premises.

There is authority to show that a surrender of part will be effected, by operation of law, if a new tenancy is granted of that part. Rolles' Abridgment, vol. II, records (in 1601) a decision, *Fish* v. *Campion*, of that nature (. . . *solment pur cest part, & nemy pur tout*). At the conclusion of his judgment in *Carnarvon* (*Earl*) v. *Villebois* (1844), 13 M. & W. 313, Alderson, B., approved an argument that if a tenant for life of Blackacre and Whiteacre accepted from his lessor a new lease of Blackacre only, there was a surrender by operation of law of Blackacre; but it in no respect affected the title to Whiteacre.

Such authority would support the proposition that in September, 1951, the defendant surrendered rooms *b* and *c*. Danckwerts, J., however, appears to have treated the transaction as a surrender of $a + b + c$; "a surrender by operation of law simply because the new tenancy cuts out [the All E.R. report makes it 'through'] the old": [1956] 3 W.L.R., at p. 762.

Implications

I do not suggest that the inference is not justifiable; but the point may not be as academic as it looks. For the two decisions mentioned above did not go into the implications of a surrender of part; for instance, what would be the rent of Whiteacre with its unaffected title? And—the All England report mentioning that Danckwerts, J., concluded with a (conditional) prophecy of awkward and difficult questions arising under the Rent Restrictions Acts if notice to quit were given—what may be important is to know whether this re-vesting of Coke's, this continuation of the former lease (*Lloyde* v. *Gregory*), this negativing of intention to give up the former contract (*Davison d. Bromley* v. *Stanley*) etc., would mean that a landlord could demand rent, and perhaps repairs, from a tenant who has been out of possession in the belief that his estate no longer existed. In *Barclays Bank, Ltd.* v. *Stasek*, as will have been noticed, the tenant for one period occupied less accommodation at less rent. Also, it was fortuitous that *b* and *c* had not been let—or "let"—to someone else.

R. B.

HERE AND THERE

PERSONAL COLUMN

A MONTH or so ago, a correspondent very kindly sent me a cutting of a personal column advertisement which he rightly guessed would interest me: "Client of solicitors, a Welsh lady living alone, would welcome the companionship of another to live in with her. Would consider a paid companion. Suitable for a middle-aged woman who is living alone. References will be required." Of course, if I were a novelist those few suggestive lines would provide me with the entire background for my next book, perhaps a mystery thriller, perhaps something on the lines of "Wuthering Heights." In an ancient stone manor house in a remote and sinister green valley, preferably in the neighbourhood of the Devil's Bridge, a lady would be living alone with her harp and her cats and her goats and her memories of an ancient line, stretching back to that immeasurably remote past when the history of the princes and the bards merges into myth. She must be clearly out of touch and sympathy with the Welfare State and its implications, for the nuance will not have escaped you that the lady is advertising for a woman. As the poet has written in another context:

> "She is The Lady and I am The Woman
> I take 'er some tea when the clock's strikin' nine.
> 'Good Woman, good mornin',' she says through her yawnin',
> 'The weather outside, Is it wet? Is it fine?'"

CLIENT OF SOLICITORS

WERE I a novelist, my fancy would roam endlessly over the conjectural portrait of the recluse who with the help of another recluse designs to become a semi-recluse, but what catches the lawyer's eyes and opens them in a wild surmise

is that initial descriptive phrase which evidently is designed to strike the keynote of the character study, "client of solicitors." One is accustomed to those suave advertisements in the daily papers (doubtless addressed to suddenly enriched "pools" winners from Bolton-le-Moors or bulldozer drivers with their £50-a-week pay packets) suggesting the embarrassments of not having a banking account and one would readily see the point of starting an advertisement "customer of bankers." Similarly, "patient of doctors" might be the call of one hypochondriac hailing another, as one might say "keen gardener" or "enthusiastic playgoer" to attract a companion of similar tastes. "Vicar's congregation member" would conjure up a fairly clear portrait of a well known type and to some might well convey a reassuring impression. But "client of solicitors"? It is one of those protean descriptions which might imply almost anything. The lady might be the heiress to estates so enormous and engaged in transactions so complex and remunerative (all conducted by telephone because she is living alone) that the management of her affairs would alone be sufficient to support a firm of country solicitors. Or the lady might be an inveterate maker of wills, constantly instructing her solicitors to draft fresh testamentary masterpieces, tying up her property in ever more complicated knots, disinheriting one beneficiary or bringing in another, as the whim took her after brief intimidating interviews in the echoing solitude of her lonely mansion. Or she might have inherited one of those legendary, interminable Chancery suits which fascinated Dickens, or again she might make a hobby of litigation instead of chess, but with all the rigour of the game and not in the manner of those tiresome amateurs, the litigants in person, the terror of solicitors and of the entire legal profession. No, the expression "client of solicitors" is utterly elusive and the advertiser (should she advertise again) would be well advised to redraft it in more precise terms, for do not the men and women (and the occasional lady and gentleman) who appear in the dock at the Old Bailey and the Assizes, most of them, answer to the description? We are sure she would not like to be confused with them. However, it is calculated to bolster the ego of members of the profession to find the privilege of consulting them used as a public recommendation and almost as a title of honour. It is an honour they delight to confer.

DOUBLE RÔLE

AGAIN, in redrafting with greater precision the description "client of solicitors" one would have to convey some clue to the question: Client of *what* solicitors? As it stands, the phrase would equally well cover the solicitors to the Bank of England and Messrs. Dodson & Fogg. All the same, one sees on reflection that the idea of some such indication has a point, for even those who have no solicitors sometimes find it necessary to invent them. There was that versatile clerk (of no fixed address) who appeared at the Old Bailey recently and was surely a great character actor who had missed his vocation. In his career as a confidence trickster he had impersonated a doctor, an American officer, an English wing-commander and the secretary to a Bishop-elect. But even he felt it necessary to establish himself as a "client of solicitors," and, of course, what more suitable than that he should impersonate his own imaginary solicitor? Posing as a businessman from Montreal with a high position in a well known paper company, he was in negotiation with a Hampstead lady to buy a large quantity of china and glassware. Then, in the character of his own solicitor, he rang her up to say that she would receive a cheque drawn on a Montreal bank, but unfortunately he was insufficiently schizophrenic to maintain the double rôle and as the solicitor he spoke in unctuous praise of her beautiful garden which he had only seen in the character of the man from Montreal. This extra-professional digression aroused the lady's suspicions. She informed the police, who gave the gentleman the occasion to become a genuine client of solicitors and ultimately assured him a fixed address for the next five years.

RICHARD ROE

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

A Happy Ending

Sir,—Richard Roe's reference to the Frenchman's idea of a happy end of life [p. 796, *ante*] reminds me of an occasion when I passed the same remark to Mr. Ryder Richardson, Q.C. His comment was that to achieve perfection the word "jealous" should be preceded by the word "justly."

St. Albans. H. M. HORE.

The Notary Public

Sir,—I appreciate the kindness of the Ordinary Commissioner's remarks, but there is some difficulty in writing about the notary's work owing to its almost astonishing variety.

The notary may be called upon to either witness the signing of a document, or to take an affidavit of its due execution. Speaking generally, he then has to endorse a certificate stating his own qualifications, that he witnessed the execution which is in the proper handwriting of the person executing the document, and if necessary that the witnesses also properly signed the document. With this endorsement or annexed statement the document is sent to the consulate concerned either direct or via the Home and Foreign Offices as mentioned in my article, "Documents Executed Abroad," at 99 SOL. J. 752 (5th November, 1955).

I say "speaking generally" because there are many minor variations according to the document and the country. The full information on these matters, which are almost a matter of comparative law, is contained in Brooke's "Office of Notary," the eleventh edition of which is being prepared by Mr. Wilfrid Phillips. Even then there are many little matters not covered, most of which require a signature and seal alone. Examples of these were the consent of the parent of a girl under twenty-one who wished to marry an American airman; an American citizen who wished to have an absent vote for the Presidential Election (I was surprised to note that he had to state his party on his application); an executor who wished to have an inventory of effects to be sent behind the Iron Curtain signed and sealed for the benefit of the customs officials there; and the guardian of an infant who wished to swear to her educational standard before sending her to South America.

The fees of which your correspondent expresses envy are very similar to what we, as solicitors, knew as Schedule II. At the general meeting on the 5th October, 1944, the Incorporated Society of Provincial Notaries Public of England and Wales adopted a scale which starts with "Taking affidavits (Each deponent or Declarant) without seal, 6s. 8d., ditto with Notarial Seal to Jurat, 10s. 6d.," and goes on through all matters to Letters, short, 3s. 6d., long, 5s., etc. Also similarly 50 per cent. is added to all bills, and disbursements are extra.

Yours faithfully,

N. P.

Leatherhead, Surrey.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Court of Appeal

LANDLORD AND TENANT ACT, 1954: "PURCHASED": MERGER OF TENANCY WITH FREEHOLD INTEREST: INTENTION OF COMPANY TO OCCUPY PREMISES

H. L. Bolton (Engineering) Co., Ltd. *v.* T. J. Graham and Sons, Ltd.

Denning, Hodson and Morris, L.JJ. 9th October, 1956

Appeal from Birmingham County Court.

In 1941 a limited company *A* purchased the freehold of certain land and buildings, and leased them to company *B*, which in turn sublet part of the premises to company *C*. In July, 1954, company *A* as landlords served notice to quit on company *B* in accordance with the terms of the lease; but that notice was rendered ineffective by the coming into force of the Landlord and Tenant Act, 1954. Company *B*, however, moved out in February, 1955, surrendering their tenancy to the freehold landlord company *A*, which thereupon served notice in accordance with the Act on company *C*. Company *C* as tenants of business premises claimed the protection of the Act of 1954 and applied for a new tenancy. The landlords opposed the grant of a new tenancy on the ground, *inter alia*, that they intended to occupy the holding for their own business within s. 30 (1) (*g*) of the Act. Prior to the hearing of that application in the county court there had been no board meeting or other collective decision showing the intention of the landlords to occupy the premises in question. The business of the landlords was customarily managed by their directors and agents, who held only one board meeting a year, but who had in the managerial capacity affirmed such an intention and had taken practical steps to that end. The applicant company *C* contended (1) that the surrender by company *B* of its tenancy constituted a "purchase" of the interest of the landlords within the meaning of s. 30 (2) of the Act of 1954 less than five years before the termination of the current tenancy such as to debar the landlords from relying on para. (*g*); and (2) that the landlords, being a limited company, had not proved the necessary intention to occupy. Section 30 (2) provides: "The landlord shall not be entitled to oppose an application on the ground specified in para. (*g*) of the last foregoing subsection if the interest of the landlord, or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy . . ."

DENNING, L.J., said that the first question was: What was the true meaning of the word "purchase" in subs. (2)? For the tenants it was contended that it had its old technical legal meaning and denoted any acquisition of land other than by descent or escheat; whereas for the landlord it was contended that it had its modern popular meaning of "buying for money." His lordship thought that much help was to be gained from the fact that this Act of 1954 dealt with a subject-matter similar to that of the Rent Restriction Acts, in which it was clearly established by decided cases that "purchased" was used in its popular sense. In his lordship's view "purchased" in this Act had the same meaning as in the Rent Acts. Though the words "or created" were added in the Act of 1954 and did not appear in the Rent Acts, the reason for that was apparent—to deal with such a case as *Powell* v. *Cleland* [1948] 1 K.B. 262, which did not apply to this Act. The meaning of "purchased" as "bought for money" conformed with the intention of Parliament, to prevent a speculator buying up the property and then getting the tenant out on the ground that he required it himself. But Parliament did not intend to place a like fetter when the premises came into the landlord's hands by a surrender for no money payment at all. Accordingly these landlords did not purchase within the five years and were therefore not debarred from relying on para. (*g*). As to whether the landlords had proved the necessary intention to occupy the holding for their own purposes, the county court judge had found that this company, through its managers, intended to occupy; and his lordship agreed that the intention of this company could be derived from the intention of its officers and agents. The state of mind of managers who represented the directing mind and will of a company and controlled what it did was the state of mind of the company and was treated by the law as such. Whether their intention was the company's intention depended on the nature of the matter under consideration, the relative position of the officer or agent, and the other relevant facts and circumstances of the case. Though there had here been no board meeting, nevertheless, having regard to the standing of these directors in control of the company's business and other facts and circumstances, the judge was entitled to infer that the intention of the company was to occupy the holding for their own purposes. The appeal should be dismissed.

HODSON and MORRIS, L.JJ., agreed.

APPEARANCES: *Michael Albery*, Q.C., and *Philip Cox* (*Stafford Clark & Co.*, for *Faber & Co.*, Birmingham); *R. O. Wilberforce*, Q.C., and *Frank Whitworth* (*J. Unsworth*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 804**

SHIPBUILDING REGULATIONS: PUBLIC DRY DOCK: FALL OF SEAMAN INTO BILGES: LIABILITY OF SHIPOWNERS

Bryers *v.* Canadian Pacific Steamships, Ltd.

Singleton, Jenkins and Parker, L.JJ. 12th October, 1956

Appeal from Diplock, J. ([1956] 1 W.L.R. 1181; *ante*, p. 635).

By the Shipbuilding Regulations, 1931: "Duties: It shall be the duty of the occupier to comply with . . . these regulations. Provided that, when a ship is being repaired in public dry dock, the person who contracts with the owner of the ship . . . to execute the work of repair shall be deemed to be the occupier for the purposes of Pts. I to VIII and it shall be his duty to comply with the said parts, except as follows:— . . . (*b*) Where the control of the ship apart from the work of repair remains with the shipowner, it shall be the duty of the shipowner . . . to provide the protection specified in reg. 10 so far as concerns those hatches or openings which are not required to be used for the purposes of the repairs . . ." By reg. 10: "All openings in decks and tank tops shall be securely protected. Such protection shall be maintained in position and when necessarily removed in the course of work shall be replaced as soon as practicable . . ." An able seaman employed as a yeoman carpenter by the owners of a ship which was undergoing overhauling and repair in a public dry dock sustained injuries when, in the ordinary course of his work of clearing the scuppers and bilges, he fell into an opening in a deck of the vessel which had been left uncovered. It was not a part of the vessel affected by the repairs. At the time of the accident a number of contractors were under direct contract with the shipowners to make specialist repairs. The seaman sued the shipowners, claiming damages on the ground, *inter alia*, of breach of reg. 10. The trial judge found for the plaintiff, and on appeal the shipowners contended that the exceptions to the proviso in the section of the regulations headed "Duties" only came into operation where there was one notional occupier, and in the circumstances of the present case the shipowners owed no duty under reg. 10. They also contended that the plaintiff was not a person upon whom the regulations conferred a civil right of action.

SINGLETON, L.J., said that though (*b*) appeared in the form of an exception to a proviso, it was a general principle stated to be observed by the parties mentioned, whether there was one repairer or ten repairers under different contracts with the shipowner. The defendants said that when there were a number of repairers there was no "occupier," and, therefore, the exceptions to the proviso could not apply. But that would make havoc of the regulations, and someone ought to be responsible for complying with reg. 10. It was impossible to say that the owners of the dry dock should be responsible. The question was governed by *Wilkinson* v. *Rea, Ltd.* [1941] 1 K.B. 688, though the present point had not been expressly raised. Coal was being delivered to a ship in dry dock, which involved having a hatch in the galley left open, while trifling repairs were being done by a contractor. While the ship's lighting was temporarily cut off at the request of a Lloyd's surveyor, an employee of the repairers went into the galley and fell down the hatch. It was held by the Court

of Appeal that the coal merchants and shipowners were liable, while the repairers were not. That case was conclusive, and in *Hartwell* v. *Grayson Rollo & Clover Docks, Ltd.* [1947] 1 K.B. 901, it was held that one of several repairers was not the notional "occupier" for the purpose of the regulations. It was further argued that the regulations did not apply to a man on a ship employed by the shipowners, and *Hartley* v. *Mayoh & Co.* [1954] 1 Q.B. 383 was relied on. But having regard to the terms of the Factory and Workshop Act, 1901, under which the regulations were made, it seemed that the regulations were made for the protection of every person working in the "factory," the shipbuilding yard or dry dock. The plaintiff was entitled to succeed under reg. 10.

JENKINS and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *J. S. Watson*, Q.C., and *J. M. Kennan* (*Hill, Dickinson & Co.*); *Rose Heilbron*, Q.C., and *H. L. Lachs* (*Mawby, Barrie & Letts*, for *Silverman & Livermore*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 776**

PRACTICE: JUDGMENT IN DEFAULT OF APPEARANCE: VARIATION OF ORDER FOR COSTS

G. L. Baker, Ltd. *v.* Barclays Bank, Ltd., and Others

Lord Evershed, M.R., Birkett and Romer, L.JJ.

15th October, 1956

Appeal from Upjohn, J.

The plaintiffs issued a writ indorsed with claims that specified sums of money had been fraudulently converted by the defendants, and, alternatively, that each sum, being their property traceable in equity, should be repaid by the defendants to them. Two of the five defendants failed to enter an appearance and the plaintiffs obtained judgment in default of appearance and proceeded to levy execution against them. The defendants applied successfully to have the judgments against them set aside on the ground that the claims indorsed on the writ were not for a liquidated demand, or not for a liquidated demand only within R.S.C., Ord. 13, r. 3, and Ord. 3, r. 7, respectively. The plaintiffs were ordered to pay the defendants' costs. The plaintiffs appealed.

LORD EVERSHED, M.R., said that Upjohn, J., had evidently taken an adverse view of the plaintiffs' behaviour, issuing a writ during the long vacation in respect of claims which may well have been statute-barred without any previous warning to either of the defendants or their advisers, and giving them no notice of having obtained a judgment before proceeding against these two reputable companies. The judge had, of course, a discretion in the question of costs, but if the judgments were regular, it would be unjust to order the plaintiffs to pay costs merely because of their lack of courtesy. In his view the claims made were for liquidated demands within the meaning of R.S.C., Ord. 13, r. 3. The further relief claimed of a tracing order could not properly be described as a mere claim for a liquidated demand and, therefore, the indorsement did not come within the scope of Ord. 3, r. 7, for these were not claims for liquidated demands only. Accordingly, the judgments obtained against the two defendants were regular, and the order as to costs should be varied to the extent of providing that the costs of the motion to set aside the judgments should be costs in the cause.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed. Order varied.

APPEARANCES: *Neil McKinnon* (*Bell & Ackroyd*); *Michael Eastham* (*Kingsley Napley & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 1409**

Chancery Division

WILL: ELECTION: CONTRACT BY TESTATRIX TO DEVISE HOUSE TO BENEFICIARY TO WHOM SHARE OF HOUSE ALREADY DEVISED

***In re* Edwards, deceased; Macadam *v.* Wright and Others**

Upjohn, J. 13th October, 1956

Adjourned summons.

A testatrix by her will dated 8th February, 1952, directed that No. 78 Albion Road, Hounslow, together with the remainder of her estate both real and personal should be divided among seven named beneficiaries who included *W*, her sister. In May, 1952, the testatrix and *W* entered into an oral agreement whereby in consideration of *W* agreeing to come and reside with the testatrix and perform certain household duties for her the testatrix promised, *inter alia*, to devise No. 78 Albion Road to *W* by her will. On 1st June, 1952, in pursuance of this agreement, *W* came to live with the testatrix until the death of the testatrix on 30th July, 1952. The testatrix's will was proved in September, 1952, by her executor, the plaintiff, and on 2nd October, 1953, by an order of Danckwerts, J., the said oral agreement was declared a binding contract between the testatrix and *W*, and No. 78 Albion Road was accordingly conveyed to *W*. By this summons the plaintiff then asked whether or not *W* was bound to elect between the one-seventh share of the property, No. 78 Albion Road, together with the residue of the testatrix's estate bequeathed to her by the said will, and the said property; or whether she was entitled to take both.

UPJOHN, J., said that it was admitted that if the will had been executed after the agreement, a perfect case of election would have arisen; but it was argued that, as the agreement was made after the will, an ademption had taken place so that the sister was entitled to participate in the residue without any election. The doctrine of election was not in doubt and was stated in Mr. Jarman's words in Jarman on Wills (8th ed., vol. 1, p. 545); that statement was based on the language of Lord Hatherley in *Cooper* v. *Cooper* (1874), L.R. 7 H.L. 53; the law inquires on the death of a testator what were his intentions as expressed in his will; if he clearly intended to dispose of the property of another, who was a beneficiary under the will, such beneficiary must give effect to the testator's intention either by abandoning his interest under the will or by making compensation for the disappointed intention of the testator. It was argued for the sister, following certain words by Lord Cairns, L.C., in the same case, that the doctrine was based not on expressed or presumed intention, but on the highest principles of equity; and that those principles had no application where the transaction for value was after the will, and as the sister had given full value in the eyes of the law she would suffer hardship by having to elect. But the principle had been clearly enunciated by Lord Hatherley; the will spoke under s. 24 of the Wills Act, 1837, of the property comprised in it at the death; the testatrix had clearly intended by the will to dispose of the house, and if the sister desired to accept a benefit under the will she must adopt it wholly and renounce every right inconsistent with it. It did not matter whether the will or the other transaction came first. The sister must elect between the property and the residue; she had, in fact, elected to take the property. Declaration accordingly.

APPEARANCES: *R. Walton, S. W. Templeman, T. Jones* (*Anthony Gane & Co.*, Richmond; *Charles Robinson & Son*, Hounslow).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 771**

INCOME TAX: SCHEDULE A RELIEF: PAYMENT BY FRONTAGER UNDER PRIVATE STREET WORKS ACT, 1892

Davidson *v.* Deeks (Inspector of Taxes)

Danckwerts, J. 17th October, 1956

Appeal from the General Commissioners.

The Income Tax Act, 1952, provides by s. 101: "(1) If the owner of any land . . . shows that the cost to him of maintenance . . . has exceeded . . . one-eighth part of the annual value of the land as adopted under Sched. A . . . he shall, in addition to the reduction of the assessment, be entitled . . . to repayment of the amount of tax on the excess . . . (2) . . . 'maintenance' shall include the replacement of . . . other works . . . in so far as they are made to comply with the provisions of any statute . . ." A taxpayer claimed to be entitled to an allowance under s. 101 in respect of a sum paid by him for road works carried out by a local authority on a road on which his property abutted. He appealed from a decision of the general commissioners, who held that he was not entitled to claim maintenance relief under that section, on the grounds (*a*) that he was not the owner (or lessee) of the land on which the expenditure was incurred; (*b*) that the land was not assessed to tax under Sched. A; and (*c*) that the expenditure was incurred by virtue of the appellant being the owner (lessee) of land fronting and abutting on the roadway and assessed to tax under Schedule A.

DANCKWERTS, J., said that the taxpayer's case was that he had paid his frontager's apportionment by reason of his occupation of the land on which Schedule A tax was assessed, and should be

relieved accordingly. The Revenue's case was that the maintenance was not of the land of which he was tenant, but of the road on which he was a frontager, so that the case did not fall within s. 101. It was plain that under the Private Street Works Act, 1892, the taxpayer was assessed as a frontager, and not as the owner in any way of the land forming the road. The onus was on him to establish his right to exemption. He claimed that the words "other works" in subs. (2) were apt to refer to the works carried out by the local authority on the road. But it was impossible to avoid the conclusion that those words must relate to the land to which Schedule A attached. Under s. 94, relief was specifically given in respect of land not the subject of the taxpayer's assessment under Schedule A; but that could not affect the true construction of s. 101. Though it was a hard case, the appeal must be dismissed. Appeal dismissed.

APPEARANCES: The taxpayer in person; *B. L. Bathurst*, Q.C., and *Sir R. Hills* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1388**

SUR-TAX: DEED OF COVENANT

Inland Revenue Commissioners *v.* Hobhouse

Danckwerts, J. 17th October, 1956

Appeal from the Special Commissioners.

By a deed of covenant, dated 5th May, 1953, a taxpayer covenanted with his son by cl. 1: "to pay him henceforth during the continuance of this covenant the annual sum of £450 less income tax thereon at the current rate for the time being the first payment to be due forthwith and the subsequent payments on the first day of May in each year." Clause 2 provided: "This covenant shall continue in operation until the happening of the first to occur of the following events or dates: (1) the death of the grantor; (2) the death of the son; (3) the bankruptcy of the son; (4) the execution by the son of any assignment or charge on the annuity; (5) the expiration of eight years from the date hereof." The special commissioners allowed an appeal by the taxpayer against an assessment to sur-tax made on him for the year 1954–55, in which he contended that the deed imposed on him an obligation to make a payment of £450 to his son on 1st May, 1954, and that the said payment was an annual payment which should be deducted in arriving at his total income for sur-tax purposes for the year 1954–55. The Revenue appealed.

DANCKWERTS, J., said that the Revenue had argued that the "eight years" must mean eight years not calculated from 1st January, but from 5th May, 1953 (which was true), and that that was contrary to cl. 1, and that the year was a year of the same kind dating from 5th May in each year, with the curious result that the son would not be entitled to any payment on 1st May, 1954. The commissioners had put the matter perfectly correctly. They said that cl. 1 provided for a payment on 1st May in each calendar year; that the Revenue had argued that in view of cl. 2 (5) the phrase "each year" in cl. 1 should be construed as each year ending on 4th May, and that, following the payment on the execution of the deed on 5th May, 1953, no further payment was due until 1st May, 1955; that they were unable to accept that, and held that cl. 1 was clear and created an obligation to make a payment of £450 on 1st May, 1954, and that the terms of cl. 2 (5) did not override the clear terms of cl. 1. That was perfectly correct, and the appeal would be dismissed. Appeal dismissed.

APPEARANCES: *Sir H. Hylton-Foster*, Q.C. (S.-G.), and *Sir R. Hills* (*Solicitor of Inland Revenue*); *J. Pennycuick*, Q.C., and *E. Griffith* (*Alsop, Stevens & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1393**

PRACTICE NOTE

FAMILY PROVISION: APPLICATIONS: TITLE OF PROCEEDINGS

***In re* Riglar, deceased; Riglar *v.* Sibley and Others**

Upjohn, J. 17th October, 1956

Adjourned summons.

On the hearing of an application under the Inheritance (Family Provision) Act, 1938, in a case in which the testator had died in 1955, and the amendments made by the Intestates' Estates Act, 1952, therefore applied, attention was called to the fact that the originating summons was intituled not only "In the matter of the estate of . . . deceased and in the matter of the Inheritance (Family Provision) Act, 1938," but also "In the matter of the Intestates' Estates Act, 1952."

UPJOHN, J., said that Sched. IV to the Act of 1952 set out the full text of the Act of 1938 as amended, and provided, in s. 6, that it was to be cited as "the Inheritance (Family Provision) Act, 1938." It was therefore incorrect to intitule these applications in the matter of the Intestates' Estates Act, 1952; but, as there might for some time be cases coming before the court to which the Act of 1938 in its original form still applied, it would be convenient that cases to which the amended Act applied should be intituled "In the matter of the estate of . . . deceased, and in the matter of the Inheritance (Family Provision) Act, 1938, as amended."

APPEARANCES: *N. S. S. Warren* (*Charles Russell & Co.*, for *Kitson & Trotman*, Beaminster); *Oliver Lodge* (*Clement G. Lawrence*, for *Geare & Williamson*, Crewkerne; *Stunt & Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1414**

COMPANY: WINDING UP: RESTORATION TO REGISTER: PROVISO TO PROTECT CREDITORS

***In re* Donald Kenyon, Ltd.**

Roxburgh, J. 22nd October, 1956

Petition.

A petition for the restoration to the register of a company which had not traded since 1940 and had been struck off in 1949 pursuant to s. 353 (6) of the Companies Act, 1948, and for its subsequent winding up contained a statement: "It is apprehended that all the debts of the company at the time of its dissolution have since become statute barred." The petition further stated: ". . . and that, after paying the costs of the liquidation, there should be a substantial surplus available for distribution amongst the contributories of the company."

ROXBURGH, J., said that the only question was whether he ought to put in the order certain words for the protection of creditors who had not become statute-barred at the date of the dissolution. The section under which this application was made was subs. (6) of s. 353 of the Companies Act, 1948. There was no direct authority on this question; the only relevant authority on the subsection being *Tyman's, Ltd.* v. *Craven* [1952] 2 Q.B. 100. The question which arose in that case was different from the present question, but each member of the Court of Appeal made a reference to the purpose of the words at the end of subs. (6). The Master of the Rolls said (at p. 111): ". . . the final words of the subsection can properly and usefully be regarded as intended to give to the court . . . the power to put both company and third parties in the same position as they would have occupied in such cases if the dissolution of the company had not intervened. More generally the final words of the subsection seem to me designed . . . to enable the court (consistently with justice) to achieve to the fullest extent the 'as-you-were position' . . ." It seemed to him that when a company had been dissolved and nobody could sue it without getting it restored to the register, it was only common fairness that, if the contributories, for purposes of their own, wanted to get it restored to the register years afterwards, the period between the dissolution and the restoration to the register should be disregarded for the purposes of the Statute of Limitations. It was true that he was giving perhaps some slight benefit to the creditors as against the company, but the section said "as nearly as may be," contemplating that the precise equation might be unattainable. Accordingly, he proposed to put a proviso in the order that in the case of creditors who were not statute barred at the date of dissolution the period between the date of dissolution and the date of restoration to the register should not be counted for purposes of any Statute of Limitations. Order accordingly.

APPEARANCES: *R. H. Hunt* (*Bentleys, Stokes & Lowless*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 1397**

Queen's Bench Division

LANDLORD AND TENANT: WAR DAMAGE: NOTICE OF RETENTION SERVED BY TENANT WITH KNOWLEDGE THAT REINSTATEMENT OF PREMISES WOULD BE IMPOSSIBLE: EFFECT OF NOTICE

Cusack-Smith and Others *v.* London Corporation

Stable, J. 12th July, 1956

Action.

Commercial property in the City of London was let by a lease for seventy-five years from 1925 at a rent of £750. On 10th May,

1941, the buildings were completely destroyed by enemy action. In May, 1950, the lessees, who had continued to pay the rent under the lease, applied to the Corporation of the City of London for permission to rebuild, but permission was refused on the ground that such rebuilding would be wholly inconsistent with the proposed scheme of development for the City of London. The lessees then served a purchase notice on the corporation under s. 19 of the Town and Country Planning Act, 1947, requiring them to purchase their interest and the notice was confirmed by the Minister on 9th November, 1951. On 27th November, 1951, the lessees, at the instigation of the corporation, served on the freeholders a notice of retention in respect of the lease pursuant to s. 4 of the Landlord and Tenant (War Damage) Act, 1939. In December, 1951, the corporation took over the lease, paying the lessees £71,250. In September, 1952, the freeholders, having applied for permission to rebuild and been refused, served a purchase notice on the corporation requiring them to purchase the fee simple. The notice was confirmed by the Minister but his decision was subsequently quashed by the Divisional Court of the Queen's Bench Division on the ground that the freeholders were not "owners" within the meaning of s. 19 of the Town and Country Planning Act and were not entitled to serve the purchase notice. The House of Lords upheld the decision of the Divisional Court, reversing the Court of Appeal ([1955] A.C. 337; [1955] 1 All E.R. 302). The freeholders now claimed a declaration that in the events which had happened the lease had been frustrated, or, alternatively, had been rendered void for illegality by reason of the service of the notice of retention so that they, the freeholders, held the fee simple interest in the property free from the lease. In the further alternative they claimed that the notice of retention was a nullity and of no effect.

STABLE, J., said that on the question of frustration, since the *Cricklewood* case [1945] A.C. 221 and *Denman* v. *Brise* [1949] 1 K.B. 22, the question whether that doctrine could apply to a lease was not open to the Court of Appeal or to a court of first instance. The plaintiffs next claimed that the issue of the notice of retention by the lessees at the instigation of the corporation *ipso facto* introduced a covenant into the lease which made it illegal. The effect of s. 10 of the Landlord and Tenant (War Damage) Act, 1939, was that if a tenant served a notice of retention (which he was under no compulsion to do) he accepted the obligation of an additional covenant in his lease to restore the property to the *status quo ante* as soon as reasonably practicable, while being relieved of the obligation to pay rent in the meantime. When in 1951 the lessees served their notice of retention, there was not the slightest possibility that such a covenant could ever be performed, in view of the refusal of planning permission in accordance with the corporation's policy. The plaintiffs contended that the lessees were accordingly covenanting to do something which they knew to be both impossible and illegal. The defendants answered that the lessees (at the instigation of the corporation) had done nothing other than exercise a statutory power. If the exercise of the power rendered the lease void for illegality at the moment of its exercise, it would make the section an absurdity. If the lessees could exercise the power, the Act provided that the lease should be kept in being with modifications, and it was a contradiction in terms to say that *ipso facto* the exercise of the power introduced an illegality into the transaction resulting in the destruction of the lease. The last question was whether the lessees could in the circumstances prevailing in 1951 effectively serve the notice of retention. The service of such a notice was purely optional. Here the corporation were seeking to retain the benefit of occupation for the next half century while ridding themselves of every obligation to pay rent. Section 10 must connote that, if notice of retention was served, the obligation to pay rent must remain except during the interim period before restoration. It was fantastic to say that Parliament, which had created the two statutory options of disclaimer or retainer, could have intended a third course, whereby the lessee disclaimed all the burden and retained all the benefit. The notice given under the then existing conditions was a nullity *ab initio*, and the plaintiffs were entitled to a declaration to that effect. Declaration accordingly.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *J. Plume* (*Boxall & Boxall*); *Harold Williams*, Q.C., and *G. D. Squibb*, Q.C. (*Comptroller and City Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1368**

CONTEMPT OF COURT: NEWSPAPER COMMENT ON PENDING CRIMINAL PROCEEDINGS: WHETHER KNOWLEDGE OF PROCEEDINGS AND INTENTION NECESSARY CONSTITUENT OF CONTEMPT

R. *v.* Odhams Press, Ltd.; *ex parte* the Attorney-General

Lord Goddard, C.J., Pilcher and Ashworth, JJ.
11th October, 1956

Motions for writs of attachment.

One of a series of articles dealing with prostitution and brothel keeping in London appearing in a Sunday newspaper alleged that one *M* was engaged in the business of purveying vice and managing street women and urged his prosecution and arrest. *M* had been arrested and brought before a magistrate charged with brothel keeping, and at the time when the article appeared was awaiting trial at quarter sessions. The newspaper had made arrangements with court reporters for the supply of reports of cases relating to prostitutes and brothel keeping, but in fact no information was given to the editor and reporter, and they did not know, of the proceedings against *M*. The Attorney-General moved against the newspaper proprietors, the editor and the reporter, for writs of attachment for contempt. The respondents did not dispute that the article tended or was calculated to prejudice the fair trial of *M*, but contended that since they had no knowledge of the pending criminal proceedings they could not be held guilty of contempt.

LORD GODDARD, C.J., reading the judgment of the court, said that anything more calculated to prejudice a fair trial could not well be imagined. While the submission made by the respondents that unless there was knowledge there could be no contempt was at first sight an attractive argument, as the court was dealing with a criminal contempt which exposed the offender to a fine or imprisonment, the cases showed that persons who published matter of this description charging alleged offences against the criminal law did so at the risk not only of being sued for libel but also of being punished for contempt if the criminal law had been set in motion. The test was whether the matter complained of was calculated to interfere with the course of justice, not whether the authors and printers intended that result, just as it was no defence for the person responsible for the publication of a libel to plead that he did not know that the matter was defamatory and had no intention to defame. It was obvious that if a person did not know that proceedings had begun or were imminent he could not by writing or speech be said to intend to influence the course of justice or to prejudice a litigant or accused person, but that was no answer if he published that which in fact was calculated to prejudice a fair trial. The court did not mean to say that a newspaper might not expose and comment on someone's conduct which they believed to be fraudulent or otherwise criminal, but if they did the comment should be made with proper restraint, taking care especially to refrain from publishing matter of which the law forbade evidence being given at the trial. It was a perilous adventure which they undertook at their own risk. In neither of the two cases, *Metropolitan Music Hall Co.* v. *Lake* (1889), 5 T.L.R. 329, and *In re Marquis Townshend* (1906), 22 T.L.R. 341, on which counsel for the respondents had relied as establishing that knowledge was an essential ingredient in the offence of contempt, did the court consider that the matter complained of was sufficiently serious to call for action, and the court could not consider either of them as qualifying the two decisions of *Roach* v. *Garvan* (1742), 2 Atk. 469, and *Ex parte Jones* (1806), 13 Ves. Jun. 237, and the subsequent decision in *R.* v. *Evening Standard, Manchester Guardian and Daily Express* (1924), 40 T.L.R. 833, showed that in matters of the description with which they were now dealing and which urged the prosecution of an alleged criminal the publication was at the risk of those responsible for it. Accordingly, the court held that the respondents and each of them were guilty of contempt. The matter could not be regarded as other than serious; the publication of such matter was obviously with a view to increasing circulation and the court would order the company to pay a fine of £1,000. With regard to the editor and reporter, as it was accepted that they had no actual knowledge of the pending prosecution, the court would not impose a sentence of imprisonment, but in the court's opinion the evidence fell far short of the standard of care which persons indulging in that kind of journalism were bound to take, and accordingly a fine of £500 would be imposed on each of those respondents. Orders accordingly.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., (A.-G.), *Rodger Winn* and *A. C. Warshaw* (*Director of Public Prosecutions*); *Gerald Gardiner*, Q.C., and *H. Davidson* (*Simmonds & Simmonds*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 796**

TOWN AND COUNTRY PLANNING: DEVELOPMENT OF LAND AS CARAVAN SITE BEFORE PERMISSION WITHDRAWN: EFFECT OF SUBSEQUENT WITHDRAWAL OF PERMISSION

Cole *v.* Somerset County Council

Lord Goddard, C.J., Hallett and Donovan, JJ.

15th October, 1956

Case stated by Somerset justices.

The Town and Country Planning General Development Order, 1950, provides by art. 3 that development of any class specified in Sched. I to the order may be undertaken without the permission of the local planning authority or the Minister. By art. 4: "If either the Minister or the local planning authority is satisfied that development of any of the classes specified in Sched. I to the order should not be carried out in any particular area, or that any particular development of any of those classes should not be carried out" without permission, they may direct that the permission granted by art. 3 shall not apply accordingly. By Sched. I, class V: "The use of land . . . for the purposes of recreation or instruction by members of an organisation which holds a certificate of exemption granted by the Minister of Health under s. 269 of the Public Health Act, 1936, and the erection or placing of tents or caravans on the land for the purposes of that use." The appellant was the owner of land which had since 1950 been used as a caravan site for recreational purposes by members of a club which held a certificate under the Act of 1936. On 24th April, 1954, the local planning authority served on the owner a direction, made under art. 4 of the order and approved by the Minister, that the permission granted by art. 3 should not apply to development on the appellant's land in respect of "use for camping and the erection or placing of . . . caravans . . . being development comprised in classes IV and V of Sched. I to the order." On 9th February, 1956, the local planning authority served on the appellant an enforcement notice under s. 23 of the Act of 1947 requiring her to discontinue the caravan site and remove the caravans. At that date there were six caravans on the site used for residential purposes. The appellant applied to the justices for an order under s. 23 (4) of the Act of 1947 to quash or vary the notice. The justices varied the order by directing that the use of the land as a caravan site should be discontinued except as to six recreational (i.e., non-residential) caravans. The owner appealed.

LORD GODDARD, C.J., said that the effect of the order was to permit the use of land not hitherto so used as caravan sites for the purposes of recreation. Article 4 applied to something to be done in the future, not to something already done under the permission granted by the Minister. What had been done had been done under the terms of the general planning permission which made it a perfectly lawful change of use, and therefore a perfectly lawful development, and there was no power to withdraw permission which had been acted upon. The words "should not be carried out" referred to the future, not to the past. The appeal should be allowed.

HALLETT and DONOVAN, JJ., agreed. Appeal allowed.

APPEARANCES: *R. Wilson*, Q.C., and *D. Widdicombe* (*Arbeid and Co.*); *J. Stephenson* and *N. King* (*Sharpe, Pritchard & Co.*, for *E. S. Rickards*, Clerk to the County Council, Taunton).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 814**

GAMING: LOTTERY TICKETS: ILLEGAL USE BY CUSTOMER: LIABILITY OF PRINTERS

McKay and Another *v.* Gillies

Lord Goddard, C.J., Hallett and Donovan, JJ.

17th October, 1956

Case stated by London Sessions.

The Betting and Lotteries Act, 1934, provided by s. 21: "Subject to the provisions of this Part of this Act, all lotteries are unlawful." By s. 22: "(1) Subject to the provisions of this section, every person who in connection with any lottery promoted or proposed to be promoted either in Great Britain or elsewhere—(*a*) prints any tickets for use in the lottery; or (*b*) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, any tickets or chances in the lottery; . . . shall be guilty of an offence." The defendants were printers who for some years had printed and carried stocks of tickets appropriate for use in lotteries, legal and illegal, which they sold to various customers whose names were left blank and who used them to promote private lotteries. In June, 1955, they sold some tickets to a café proprietor, who used them in an illegal lottery promoted among his customers between 1st August and 31st October, 1955. On 1st December, 1955, the police executed a search warrant on the defendants' premises and seized their whole stock of tickets. In January, 1956, the defendants were summoned (1) for printing tickets for use in a lottery held between 1st August and 31st October, 1955, contrary to s. 22 (1) (*a*) of the Act; (2) for having in their possession on 1st December, 1955, for the purpose of sale, tickets in lotteries, contrary to s. 22 (1) (*b*); and (3) distributing, between 25th September and 1st November, 1955, tickets in connection with the lottery referred to in the first summons, contrary to s. 22 (1) (*b*). The magistrate convicted and fined the defendants and ordered the destruction of their complete stock of tickets. Quarter sessions dismissed their appeals against conviction and sentence. The defendants appealed.

LORD GODDARD, C.J., said that the defendants had devised a method of printing tickets which could be used by anybody promoting a lottery, whether legal or illegal. As to the first charge, the use of the word "the" in s. 22 (1) (*a*) indicated that to secure a conviction there must be a definite lottery in view. Tickets had been used in an illegal lottery, but they were printed as part of the defendants' stock and not in respect of any lottery or proposed lottery. There was no evidence to support the first charge. On the second charge, there was no evidence that any lottery was being promoted or proposed when the defendants' premises were raided on 1st December, and again in subs. (1) (*b*) the words were "the lottery." On the third charge, the defendants had sold the tickets to the café proprietor before, on the evidence, the lottery was promoted. There was no evidence to support any of the charges. The defendants' merits were not only inconspicuous, but were conspicuously absent, but the appeals must be allowed.

HALLETT and DONOVAN, JJ., agreed. Appeals allowed.

APPEARANCES: *D. Collard* (*Lewis Barnes, Wheeler & Co.*); *V. Durand* (*Solicitor, Metropolitan Police*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1402

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: ADULTERY: CONDONATION: COMPLETE RECONCILIATION THE TEST: REVIVAL

Roe *v.* Roe

Lord Merriman, P., and Collingwood, J. 18th July, 1956

Appeal from an order of 23rd April, 1956, of the justices for the petty sessional division of Whitehaven made on the ground of desertion.

A husband whose wife had gone back to live with him after his admitted adultery of some five years' standing treated her with a calculated course of callous indifference and taciturnity, rejected her advances towards intercourse, and made a practice of returning home late at night without giving her any explanation of his absence. After some three weeks the wife again left home and obtained an order on the ground of the husband's desertion. The justices found that the wife had condoned the adultery but that it had been revived by subsequent misconduct. They further found that that misconduct in itself gave the wife sufficient grounds for withdrawing from the matrimonial home. (*Cur. adv. vult.*)

COLLINGWOOD, J., reading the judgment of the court, referred to *Richardson* v. *Richardson* [1950] P. 16 and upon the basis that the justices had rightly found condonation held that the husband's conduct was of such a character as to revive the adultery. It had been contended that, even if the adultery had been revived by the husband's conduct, it was not revived so as to justify a finding of constructive desertion. But the authorities showed that if condoned adultery were revived, it was revived

for all purposes (see *Lloyd* v. *Lloyd and Hill* [1947] P. 89; *Beigan* v. *Beigan* [1956] 3 W.L.R. 281; *ante*, p. 470; *Pearson* v. *Pearson* [1948] W.N. 225). It therefore followed that on the husband being guilty of conduct which revived his previous adultery, the wife was justified in leaving the matrimonial home—any other conclusion would have the effect of rendering the wife herself a deserter (*Thomas* v. *Thomas* [1924] P. 194, 201). That should be sufficient to dispose of the appeal. It had, however, been contended alternatively on behalf of the wife that, on the evidence already referred to, the justices should not have found condonation by her, in that the element of complete reconciliation was lacking. The necessity for that had been emphasised in many cases, for example, in *Keats* v. *Keats and Montezuma* (1859), 1 Sw. & Tr. 334, 357. But reconciliation in turn would seem to import the element of mutuality, and in *Perry* v. *Perry* [1952] p. 203 Evershed, M.R., had said: "... in my judgment, with the question 'Aye' or 'No' has there been condonation on the part of the injured spouse? 'bilateral' (by which I understand is meant 'common' or 'mutual') intention has nothing to do." If that pronouncement were not *obiter dictum* and if it were intended to have an application wider than to the particular example of condonation dealt with in *Henderson* v. *Henderson and Crellin* [1944] A.C. 49, it would appear to conflict with the essence of the matter as described by Lord Simon in the latter case (at p. 52), and with the decision of the Court of Appeal in *Mackrell* v. *Mackrell* [1948] 2 All E.R. 858, 861, in which Denning, L.J., said that reconciliation was the test of condonation. It was, however, unnecessary to attempt to resolve that apparent conflict of opinion, as the appeal failed for the reasons already given. Appeal dismissed.

APPEARANCES: *L. J. Antelme* (*Broughton & Co.*, for *Milburn and Co.*, Workington); *St. John Harmsworth* (*Lees, Smith and Crabb*, for *Sumner & Singleton*, Whitehaven).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.] **[1 W.L.R. 1380**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read Third Time:—

Crown Estate Bill [H.C.] [30th October.
Hill Farming Bill [H.C.] [30th October.
Occupiers' Liability Bill [H.L.] [30th October.
South of Scotland Electricity Order Confirmation Bill [H.C.] [30th October.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Third Time:—

Education (Scotland) Bill [H.L.] [30th October.
Medical Bill [H.L.] [29th October.

B. QUESTIONS

TRIBUNALS (LEGAL REPRESENTATION)

Asked whether he would repeal the restriction contained in reg. 13 (1) of the National Insurance (Determination of Claims and Questions) Regulations, 1948, upon representation of a claimant by a barrister, advocate or solicitor, Mr. BOYD-CARPENTER said the question of legal representation before the tribunals concerned and other bodies was among the matters now before the Franks Committee and he must await their report. [29th October.

LEGAL AID (INCOME LEVEL)

The ATTORNEY-GENERAL declined to amend the income level at which legal aid may be granted from £420 to the level equivalent to the 1949 value. [29th October.

INDICTABLE OFFENCES (MAGISTRATES' COURTS)

Mr. DEEDES said that the present list of indictable offences triable summarily was based upon the recommendations of a departmental committee and before any alteration was made therein it would be desirable to have a similar review of the whole question. He thought that housebreaking might not be the only candidate for inclusion in the list and he could not, at present, undertake such a review. Inclusion of housebreaking offences in the list of indictable offences triable summarily might be taken to indicate that such offences were no longer so seriously regarded by the community, so that it would not be wise to take this step when the number of such cases was increasing. [1st November.

IDENTIFICATION PARADE

Asked what sum he proposed to pay in compensation to a person wrongfully imprisoned as a result of a wrong identification in a parade, Mr. DEEDES said that it was not the practice save in the most exceptional circumstances to make any payment from public funds to a person merely because his conviction had been quashed on appeal. The Court of Criminal Appeal had power under the Costs in Criminal Cases Act, 1952, to order the payment to a successful appellant, of such sums as appeared to the court to be reasonably sufficient to compensate him from the expenses properly incurred in prosecuting his appeal or carrying on his defence. [1st November.

CRUELTY TO ANIMALS

Asked why there had been no prosecution of persons who, according to the Return of Experiments performed under the Cruelty to Animals Act, 1876, during 1955 had shown a reprehensive degree of carelessness, the HOME SECRETARY said that, as explained in the last paragraph of the return, it did not appear that in any of these cases there had been any deliberate intention to contravene the Act. He was satisfied that, after careful consideration of each case on its merits, prosecution was not justified. [1st November.

ESTATE DUTY

Mr. H. BROOKE estimated that the number of cases involved if retrospective effect were given to s. 19 of the Finance (No. 2) Act, 1956, might be between 15,000 and 30,000 since April, 1952, or between 50,000 or 100,000 since 1938. [1st November.

SHIPPING (OVERLOADING)

Mr. WATKINSON said that the matter of amending s. 44 of the Merchant Shipping (Safety and Load-Line Conventions) Act, 1932, so as to increase the fines which could be imposed for overloading had been noted for legislation when opportunity offered. To make foreign masters liable to imprisonment for an offence under the section raised a more difficult problem. [1st November.

LEGAL ADVICE SCHEME

The ATTORNEY-GENERAL said that he was not in a position to make a statement about the Legal Advice Scheme. [1st November.

STATUTORY INSTRUMENTS

Air Navigation (Minimum Height of Helicopters) Regulations, 1956. (S.I. 1956 No. 1641.) 5d.

Census of Production (1957) (Returns and Exempted Persons) Order, 1956. (S.I. 1956 No. 1648.) 5d.

Draft **Coal** and Other Mines (Height of Travelling Roads) Regulations, 1956. 5d.

Draft Coal and Other Mines (Transport Roads) Regulations, 1956. 5d.

Draft Coal Mines (Cardox and Hydrox) Regulations, 1956. 7d.

County Court Districts (Haverfordwest) Order, 1956. (S.I. 1956 No. 1674.)

This order, coming into force on 1st January, 1957, discontinues the holding of the Haverfordwest, Pembroke Dock and Narberth County Court at Pembroke Dock and Narberth. In future, it will be held only at Haverfordwest under the name of the Haverfordwest County Court.

County of Middlesex (Electoral Divisions) (No. 2) Order, 1956. (S.I. 1956 No. 1658.) 5d.

Defence Regulations (No. 3) Order, 1956. (S.I. 1956 No. 1693.) 5d.

Draft **Double Taxation** Relief (Taxes on Income) (Austria) Order, 1956. 8d.

Exchange Control (Import and Export) (Amendment) Order, 1956. (S.I. 1956 No. 1684.)

Fire Services (Conditions of Service) (No. 3) Regulations, 1956. (S.I. 1956 No. 1665.) 5d.

Fire Services (Conditions of Service) (Scotland) Amendment No. 3 Regulations, 1956. (S.I. 1956 No. 1675 (S.77).) 5d.

Haverfordwest Rural Water Order, 1956. (S.I. 1956 No. 1640, 5d.

London Traffic (Prescribed Routes) (St. Pancras) (No. 2) Regulations, 1956. (S.I. 1956 No. 1672). 5d.

Monopolies Commission (Appointed Day) Order, 1956. (S.I. 1956 No. 1649 (C.13).)

Post Office Register (Amendment) (No. 2) Regulations, 1956. (S.I. 1956 No. 1669.) 5d.

Post Office Register (Trustee Savings Banks) (Amendment) Regulations, 1956. (S.I. 1956 No. 1670.) 5d.

Premium Savings Bonds Regulations, 1956. (S.I. 1956 No. 1657.) 8d.

Registration of Restrictive Trading Agreements (Fees) Regulations, 1956. (S.I. 1956 No. 1655.) 5d.

Registration of Restrictive Trading Agreements Regulations, 1956. (S.I. 1956 No. 1654.) 6d.

Solicitors' Remuneration Order, 1956. (S.I. 1956 No. 1593.) 5d.

Stopping up of Highways (Bradford) (No. 10) Order, 1956. (S.I. 1956 No. 1642.) 5d.

Stopping up of Highways (Derbyshire) (No. 15) Order, 1956. (S.I. 1956 No. 1660.) 5d.

Stopping up of Highways (Essex) (No. 10) Order, 1956. (S.I. 1956 No. 1650.) 5d.

Stopping up of Highways (Essex) (No. 27) Order, 1956. (S.I. 1956 No. 1651.) 5d.

Stopping up of Highways (Glamorganshire) (No. 1) Order, 1956. (S.I. 1956 No. 1661.) 5d.

Stopping up of Highways (Hertfordshire) (No. 11) Order, 1956. (S.I. 1956 No. 1659.) 5d.

Stopping up of Highways (Northamptonshire) (No. 9) Order, 1956. (S.I. 1956 No. 1662.) 5d.

Stopping up of Highways (Staffordshire) (No. 7) Order, 1956. (S.I. 1956 No. 1663.) 5d.

Stopping up of Highways (Warwickshire) (No. 13) Order, 1956. (S.I. 1956 No. 1643.) 5d.

Draft **Stratified Ironstone, Shale and Fireclay** Mines (Explosives) Regulations, 1956. 11d.

Sugar Surcharge Regulations, 1956. (S.I. 1956 No. 1652.) 5d.

Teachers' Salaries (Scotland) Regulations, 1956. (S.I. 1956 No. 1656 (S.76).) 2s. 2d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Estate Duty—Surviving Spouse Exemption—Life Tenant's Power to Demand Capital so far as Needed

Q. A testator by his will has given the residue of his estate to trustees upon trust to pay the income thereof to his wife during her life, but at any time during her life his trustees shall either (*a*) at her written request raise from the capital of his residuary estate any capital sum or sums only so far as needed by her and pay the same to her or as she shall direct in writing, or (*b*) at their discretion raise any sum or sums from the capital of the residuary estate and pay or apply the same to her or for her benefit in case of her need, and it is provided that the trustees shall not be under any responsibility for seeing to the application of any such sums or for seeing whether any such need has arisen. The testator then places on record that he makes these provisions not from any lack of confidence in his wife but with a view to helping her and saving her as much trouble as possible. Is it considered that under this trust the residuary estate would be exempt from estate duty on the death of the widow, assuming that estate duty is paid on the testator's death in the first instance?

A. It will be recalled that for the property to be exempt from estate duty on the death of the surviving spouse it must be shown that the spouse has never been competent to dispose of that part of the property which passes to the remaindermen on her death. It is perfectly clear that where, as in such cases as *Re Shuker's Estate* [1937] 3 All E.R. 25, or *Re Lawreys' Estate* [1938] 1 Ch. 318, a life tenant has power to apply to her own use such part of the capital as she thinks fit, she is competent to dispose of the whole even though the power is never exercised. But where, as in this case, she has power to demand from the trustees only such part as she may need it can be argued that she is not competent to dispose of such part as she does not need and that the extent of that part may be measured by the fact of its remaining unapplied to the life-tenant's needs at her death. We are in some doubt as to how easily the Estate Duty Office authorities will be persuaded of this, but we think that the argument is well worth advancing. In our view it gains a good deal of support from *Re Pedrotti's Will* (1859), 27 Beav. 583, and from *Re Fox* (1890), 62 L.T. 762.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Landlord and Tenant—Tenant's Agreement to Repair—Added Parcels and Increased Rent—Whether New Tenancy Created Abrogating Agreement

Q. A let the whole of a dwelling-house less one room (which was used for storing furniture) to *B* on a weekly tenancy under a written agreement. The agreement provided that *B* should be responsible for interior and exterior repairs. Subsequently by verbal agreement *A* released the room which had been used for storage and allowed *B* to include this in his tenancy on payment of additional rent of 4s. per week. *B* has not carried out repairs and *A* has served on *B* a schedule of works. *B* refuses to carry these out and contends that, with the subsequent inclusion of the one room in the tenancy, a new tenancy was created. The previous written agreement, *B* contends, does not relate to the present tenancy of the whole house, and he is therefore not responsible for the external and internal repairs. Is *B* correct or has *A* a good claim for possession for breach of covenant?

A. In our opinion, both the question whether a new tenancy was created and the question what, if it was, were its terms, are essentially questions of fact. We consider that there is some substance in the contention that, by reason of the added parcels and increased rent, the original demise came to an end when the change was made; but, subject to there being evidence to the contrary, we also consider that the proper inference would be that the new tenancy, comprising the previously excepted room and reserving the additional 4s., repeated the tenant's obligations to repair, contained in the agreement which was determined. Such an inference would be consistent with the fact that the added room was something which "went with" the rest of the premises demised; it is not as if some physically separate property were being let or included in a letting. We are not aware of any authority in point, but suggest that the reasoning employed in "holding over" cases would be applicable: e.g., in *Richardson* v. *Smith* (1834), 1 Ad. & E. 52 (good tenantable repair) or in *Martin* v. *Smith* (1874), L.R. 9 Ex. 50 (to paint at prescribed intervals).

NOTES AND NEWS

Honours and Appointments

Sir HERBERT CHARLES FAHIE COX has been appointed Chief Justice of Basutoland, the Bechuanaland Protectorate and Swaziland in succession to Sir Harold Willan, C.M.G., M.C.

Mr. GWILYM LLEWELLYN, Registrar of the Bangor, Caernarvon, Conway, Llandudno and Colwyn Bay, Llangefni, Holyhead and Menai Bridge and Llanrwst County Courts, and District Registrar in the District Registries of the High Court of Justice in Bangor and Caernarvon, has been appointed, in addition, Registrar of the Portmadoc and Blaenau Festiniog and Pwllheli County Courts in succession to Mr. W. Cradoc Davies, who has retired.

Mr. DOUGLAS HAROLD NIELD has been appointed Registrar of the Crewe and Nantwich, Market Drayton and Northwich County Courts, and District Registrar in the District Registry of the High Court of Justice in Crewe in succession to Mr. A. O. Bevan, who has retired.

Councillor DAVID WILLIAMS, LL.B., solicitor, a member of the Caernarvon Borough Council, has been appointed a member of the Council for Wales and Monmouthshire, for a period of three years, to represent non-county boroughs.

Personal Notes

Mr. Victor Franklin has resigned his post as clerk to the Bullingdon (Oxford) magistrates owing to pressure of private work.

Sir Henry Gregory, K.C.M.G., C.B., adviser on Copyright to the Board of Trade, has recently relinquished that post.

Miscellaneous

DOUBLE TAXATION—AUSTRIA

The Double Taxation Convention with the Republic of Austria, which was signed on 20th July, has been published as a schedule to a draft Order in Council. The Convention, which is subject to ratification, provides for the avoidance of double taxation of income and profits, and is expressed to take effect in the United Kingdom from 6th April, 1956. It is in general similar to those which the United Kingdom has already made with other European countries.

DEVELOPMENT PLANS

COUNTY BOROUGH OF DONCASTER DEVELOPMENT PLAN

Proposals for alterations to the above development plan were on 24th October, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situated in the Cleveland Street/St. James Street/Grove Street area and in the Kelham Street area within the County Borough of Doncaster. A certified copy of the proposals as submitted has been deposited for public inspection at the office of the borough surveyor and planning officer, Old Exchange Buildings, Cleveland Street, Doncaster. The copy of the proposals so deposited together with a copy of the plan is available for inspection free of charge, by all persons interested, at the place mentioned above, between 9 a.m. and 12 noon Mondays to Saturdays inclusive, and 2.15 p.m. to 5 p.m. Mondays to Fridays inclusive. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 10th December, 1956, and any such objection or representation should state the grounds on which it is made. Persons making objection or representation may register their name and address with the Town Clerk of Doncaster, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

EAST SUFFOLK COUNTY DEVELOPMENT PLAN

On 8th October, 1956, the Minister of Housing and Local Government amended the above development plan by the addition of details for the Urban District of Felixstowe. A certified copy of the plan as amended by the Minister has been deposited at the County Hall, Ipswich, and an extract of the plan as amended so far as the amendment relates to the Urban District of Felixstowe has also been deposited at the Town Hall, Felixstowe. The copy or extract of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9.30 a.m.—12.30 p.m., and 2.30 p.m.—4.30 p.m. on Mondays to Fridays and from 9.30 a.m.—12 noon on Saturdays. The amendment became operative as from 26th October, 1956, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 26th October, 1956, make application to the High Court.

THE SOLICITORS ACTS, 1932 TO 1941

With reference to the notice relating to OLIVER HOWELL PENN JONES in the *London Gazette* for 12th June, 1956 [cf. p. 475, *ante*], pursuant to s. 7 (2) of the Solicitors Act, 1932, the said Oliver Howell Penn Jones appealed from the Order of the Disciplinary Committee and the appeal was heard by a Divisional Court of the Queen's Bench Division on 4th October, 1956, when the court ordered that so much of the Order of the Disciplinary Committee as orders that the name of the said Oliver Howell Penn Jones be struck off the Roll of Solicitors of the Supreme Court be set aside and in lieu thereof that the said Oliver Howell Penn Jones be suspended from practising as a solicitor for a period of two years from 8th June, 1956.

JACOB JAFFE, of 9A Park Crescent, Southport, in the County of Lancaster, solicitor, having, in accordance with the provisions of the Solicitors Acts, 1932 to 1941, made application to the Disciplinary Committee constituted under the Act that his name might be removed from the Roll of Solicitors at his own instance on the ground that he desires in due course to be called to the Bar, an Order was, on 18th October, 1956, made by the committee that the application of the said Jacob Jaffe be acceded to and that his name be removed accordingly from the Roll of Solicitors of the Supreme Court.

LAWFUL GENTLEMEN

Are solicitors "gentlemen"? If so, why? In a B.B.C. Third Programme talk on 12th November, Stanley Rubinstein will describe some of the recent researches, by himself and others, to discover the basis of the widely held belief that they are "gentlemen" by Act of Parliament, and also the lawful status of the solicitor.

CHRISTMAS DANCE

The "Oyez" Club, which is run for and by the staff of The Solicitors' Law Stationery Society, Ltd., proprietors of THE SOLICITORS' JOURNAL, is holding its Christmas Dance at the South Hall Suite, Victoria Halls, Bloomsbury Square, W.C.1, on 12th December, from 7.30 p.m. to 11.30 p.m. Members of the legal profession and their staffs will be welcome, and tickets, price 4s. (7s. double), may be obtained in advance from the Social Secretary, "Oyez" Club, 21 Red Lion Street, W.C.1. A limited number of tickets will be available at the door.

MEDIEVAL VIEWS OF CRIME

Two talks by T. F. T. Plucknett, Professor of Legal History, London University, on "Crime and Punishment in the Middle Ages," are to be broadcast on 11th and 14th November in the B.B.C.'s Third Programme.

Out of twenty-four candidates who sat for the Preliminary Examination of The Law Society held on 8th, 9th, 10th and 11th October, 1956, thirteen passed.

Wills and Bequests

Mr. Frank Hamer Duncan, solicitor, of Southport, left £25,782 (£23,159 net).

Mr. W. P. Green, solicitor, of Knutsford, Cheshire, left £117,110 net.

Mr. Joseph Johnson, retired solicitor, of Harraby, Carlisle, left £24,728 (£24,562 net).

Mr. R. J. Mullings, solicitor, of Preston, near Cirencester, left £64,767 net.

Mr. Francis McNeil Rushforth, retired solicitor, of Ealing, left £69,302 (£68,697 net).

OBITUARY

MR. A. BRODIE

Mr. Alexander Brodie, solicitor, of 33 Bedford Row, London, W.C.1, died on 1st November. He was admitted in 1900.

MR. R. S. BROWN

Mr. Reginald Southgate Brown, retired solicitor, of 228 Bishopsgate, London, E.C.2, and Kensington, W.8, died on 1st November, aged 80. He was admitted in 1912.

MR. T. E. BROWN

Mr. Theophilus Edward Brown, solicitor, of Winchester, died recently, aged 78. He was at one time Registrar of the Hampshire County Court and was a past-president of the Hampshire Law Society. He was admitted in 1903.

SIR W. H. CHAMPNESS

Major Sir William Henry Champness, retired solicitor, one of Her Majesty's Lieutenants for the City of London, Deputy of the Ward of Farringdon Without, and a former Sheriff of London, died on 29th October, aged 83. He was admitted in 1903.

MR. A. G. NEWMAN, C.B., C.B.E.

Mr. Albert Gordon Newman, C.B., C.B.E., principal assistant solicitor, department of H.M. Procurator General and Treasury Solicitor, died on 29th October, aged 62. He was admitted in 1920.

MR. J. G. WILLIAMS

Mr. John Griffith Williams, retired solicitor, of Denbigh, North Wales, died on 2nd November, aged 74. He was clerk to Ruthin justices for thirty-one years and was admitted in 1908.

SOCIETIES

The UNION SOCIETY OF LONDON announces the following debates:—14th November: "That the introduction of commercial television was a mistake" (joint debate with the English Speaking Union at Concord House, Charles Street, Berkeley Square, at 8 p.m.); 21st November: "That the Olympic Games are a waste of effort and do not promote international good will" (joint debate with the Anglo-Danish Society at the Common Room, Gray's Inn, at 8 p.m.).

The SOLICITORS' ARTICLED CLERKS' SOCIETY announces the following programme for November and December:—15th November: Scottish Reels at Royal Masonic Hospital. Meet at Charing Cross underground station at 7.15 p.m. Those interested contact Patrick Wright at STAmford Hill 1255; 20th November: Debate with Chartered Accountants at The Law Society's Hall, 6 p.m. Refreshments available. The motion will be "This House considers that, in these times, tolerance is a sign of weakness not of strength"; 21st November: Annual General Meeting. At The Law Society's Hall, 6 p.m. Refreshments available. A good attendance is essential; 27th November: Address by Lord Justice Denning. Lord Justice Denning has kindly consented to address us on some aspects of the legal profession. Refreshments available at 6 p.m., the address beginning at 6.30 p.m.; 6th December: Annual Dinner and Dance. Demand for tickets for this function is generally very heavy and applications should be made without delay. Prices are: Dinner and dance, 27s. 6d. 6.45 for 7 p.m. Dance, 7s. 6d. from 9 p.m. Guests of honour, Lord Justice and Lady Birkett. Guests include the President of The Law Society.

CASES REPORTED IN VOL. 100

13th October to 10th November, 1956

Lists covering all cases reported earlier this year appear in the Interim Index (to 30th June) and at p. 686, *ante* (7th July to 1st September)

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